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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CARMELO DELATORRE,

Defendant and Appellant.

E034676

(Super.Ct.No. RIF099405)

OPINION

APPEAL from the Superior Court of Riverside County. Gordon R. Burkhardt,
Judge. Affirmed.

Peter R. Afrasiabi, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Sharon L. Rhodes and
Erika Hiramatsu, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of defendant Carmelo Delatorre's suppression motion (Pen. Code,¹ § 1538.5), he pled guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)), child endangerment under circumstances likely to produce great bodily injury (§ 273a, subd. (a)), criminal threats (§ 422) and misdemeanor battery (§ 242) and admitted enhancing allegations. The trial court sentenced him to prison.

Defendant appeals, unsuccessfully challenging the denial of his suppression motion.

FACTUAL AND PROCEDURAL BACKGROUND

At the hearing on defendant's suppression motion, Riverside County Sheriff's Deputy Matheny testified that he and Deputy Jude were dispatched to space 39 of a Rubidoux mobilehome park on September 19, 2001. Deputy Matheny spoke with Elvia Cervantes at that location. She told the deputy that she had attempted to collect rent from defendant and they argued. Defendant retrieved a firearm and "on his way out said he was going to kill her, and also hit her on the shoulder."

The deputies went to the Stone Avenue Elementary School where they encountered defendant and his wife. While the deputies were at the school, they received information that the manager of the mobilehome park had checked defendant's trailer. The dispatcher told them that the manager had found what he believed was a lab at space 39. The deputies transported defendant back to the mobilehome park where they talked to the manager.

¹ All statutory references are to the Penal Code unless otherwise noted.

The manager told the deputies that he entered the trailer through an open door, saw what he believed was a methamphetamine lab, and was overcome by the fumes. He had experience with “previous labs” in the mobilehome park at that location. Deputy Matheny became concerned about the health and fire hazards of the clandestine methamphetamine lab in view of the close proximity of the neighbors and children. He learned that four children lived in the trailer and he was concerned that they would return home to a methamphetamine lab where they would be exposed to breathing problems and could put their hands on hazardous liquid and glassware. Based on his experience with mobilehome fires which burn very quickly, he also was concerned about the fire hazard posed to the many trailers that were located close together and the people in them.

Before entering the trailer to verify the manager’s findings, the deputies called out, “Is anyone in there?” and received no response. They entered through the same open door that the manager had used. Holding their breath because of the toxic fumes that the manager had described, the deputies “went to the room [the manager] described and saw the glassware and the liquid in the buckets and burners, and then left.” The deputies notified the Special Investigation Bureau.

Riverside County Sheriff’s Investigator Parra testified he went to investigate a clandestine methamphetamine lab located at space 39 on September 19, 2001. He was the primary investigating officer assigned to investigate the clandestine methamphetamine lab. He talked to the two deputies who were already there. They said they detained defendant for making threats and for having a rifle on school grounds. Investigator Parra also spoke with the manager, with Ms. Cervantes who owned the

trailer, and with defendant. Speaking Spanish, Investigator Parra explained to defendant that he was concerned about the volatility of the chemicals inside the trailer and the public safety. Investigator Parra asked defendant for permission to enter the trailer and defendant said, “Yes.” Investigator Parra also “filled out a written consent for him to read it in Spanish and sign it.” Defendant read and signed the form. After defendant signed the form, Investigator Parra and his team entered the trailer.

Investigator Parra had taped off the trailer and no one entered before defendant consented. He also had “created a hot zone containment of – of the trailer because of the volatility of the chemicals And [he] made a cold zone, meaning it was okay to stand without self-contained breathing apparatuses. [He] evacuated a surrounding area of trailers [because of his] concern [for the] children and the public safety in and around the trailers.”

Denying defendant’s motion, the court found “the officers were aware that there was some problem in that trailer based upon the information they had received from the manager. They didn’t know . . . the extent of what was in there. But . . . they have an absolute duty to protect property and persons to find out if they have a – something that’s going to be so volatile that life and limb and property will be damaged. [¶] [F]or them not to have entered would have been . . . a dereliction of their duty. Because what they did is, they went in wanting to check to see if there was anybody in the property. Secondly, they went in to determine to what extent there might be something that was a danger to others. [¶] [M]ost of us would probably agree that these chemicals standing alone would probably be reasonably harmless. But it’s the combination of chemicals and

the heating of chemicals that creates the volatility. [¶] In this case, I think they had an absolute – absolute obligation as officers who are sworn to protect public to go in to see whether or not there was something that was going to be so volatile that it would create a danger to other people, and to also determine whether or not there was anyone in the property. [¶] They knew that there were children that lived there, but they didn't know if there was anybody there at the time. So I think they have an absolute duty to go in the property. Because once – and I think they did their job exactly right. Because once they did realize that there wasn't anything that was so volatile that it was going to create an immediate problem, they immediately exited. [¶] They then, before any further entry was made, did get consent. Of course, in the absence of consent, they could have gotten a warrant. But that wasn't even an issue here because they did get the consent. [¶] But I think they did the absolute right thing. I think anything other than that would have been horribly ineffective on their part and a certain dereliction of their duty.”

DISCUSSION

On appeal, defendant contends: (1) Deputy Matheny's warrantless search of defendant's home was unlawful and unjustified by exigent circumstances; (2) Investigator Parra's search was not justified by exigent circumstances; and (3) Investigator Parra's search was not justified by consent; it was neither voluntary nor valid in light of Deputy Matheny's prior illegal entry. We conclude Deputy Matheny's entry was justified by the exigent circumstances presented by the clandestine methamphetamine lab that the manager had seen in defendant's trailer. Therefore, it did not taint Investigator Parra's subsequent entry. Investigator Parra's entry and search

were justified by the exigencies and defendant's consent. Accordingly, we affirm the trial court's denial of defendant's suppression motion.

Absent exigent circumstances, a warrantless entry, search or seizure of a residence violates the Fourth Amendment. (*Kirk v. Louisiana* (2002) 536 U.S. 635; *People v. Bennett* (1998) 17 Cal.4th 373, 384.) The exigent circumstances test involves a two-step inquiry: (1) the factual questions regarding what the officer knew or believed and what action he took in response and (2) the legal question whether that action was reasonable under the circumstances. (*People v. Duncan* (1986) 42 Cal.3d 91, 97.) If supported by substantial evidence, a reviewing court must affirm the trial court's factual findings. But the reviewing court is responsible for deciding whether the officer's action was reasonable under the circumstances. (*Id.* at pp. 97-98.) “. . . And in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or ‘hunches,’ but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary.’ [Citation.]” (*Id.* at p. 98.)

As the finder of fact in a proceeding to suppress evidence (§ 1538.5), the trial court was vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) As there is nothing inherently improbable about Officer Matheny's testimony, we are bound by the trial court's determination that his testimony was credible. (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 578.) Therefore,

as the trial court found, the deputies entered defendant's trailer to investigate the manager's report of a clandestine methamphetamine lab based on his observations and his experience with other illicit labs at the mobilehome park. Because he was concerned about the hazards presented by the lab, Deputy Matheny entered through the same open door that the manager had used to enter the trailer. After observing the lab paraphernalia, he called the Special Investigations Bureau and secured the trailer. (*In re Andrew I.*, *supra*, 230 Cal.App.3d 572, 578 [“If a trier of fact has believed the testimony . . . this court cannot substitute its evaluation of the credibility of the witness unless there is either a physical impossibility that the testimony is true or that the falsity is apparent without resorting to inferences or deductions. [Citations.]”].)

In these circumstances, it was reasonable for Officer Matheny to believe a methamphetamine lab in defendant's trailer posed an emergency situation that required “. . . swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence’” (*People v. Duncan*, *supra*, 42 Cal.3d at p. 104, quoting *People v. Ramey* (1976) 16 Cal.3d 263, 276.) *Duncan* recognized that the odor of the chemicals used in the manufacture of methamphetamine together with other evidence of an unlawful drug lab constituted exigent circumstances sufficient to justify a warrantless entry and search of a dwelling. (*People v. Duncan*, *supra*, 42 Cal.3d at pp. 104-105; *People v. Messina* (1985) 165 Cal.App.3d 937, 944, fn. omitted [“[T]he presence of these chemicals [used to manufacture methamphetamine] in an unprofessional laboratory in a residential area constitutes an emergency which requires immediate and proper response by law

enforcement.”].) Thus, as the trial court ruled in this case, Deputy Matheny’s warrantless entry was justified by a reasonable belief that exigent circumstances requiring immediate action existed.

Investigator Parra’s entry and search also were justified by the exigencies presented by the clandestine methamphetamine lab in defendant’s trailer as well as by his verbal and written consent. Although the consent form is not part of the record on appeal, it was received by the court at the suppression hearing. Also, the court believed Investigator Parra’s testimony that defendant voluntarily gave verbal and written consent and we are bound by the factual determinations. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 183-184; *People v. Memro* (1995) 11 Cal.4th 786, 846-847; *People v. James* (1977) 19 Cal.3d 99, 106-107.)

In view of the foregoing, the trial court properly denied defendant’s suppression motion.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

WARD

J.